



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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M E M O R A N D U M

TO: Members, Public Disclosure Commission

FROM: Doug Ellis
Acting Assistant Director

DATE: June 7, 2005

RE: Executive Summary and Staff Recommendations Regarding the 2001 Des Moines City Council election:

(1) TME Capital Group, LLC; and its investors Elling Halvorson, Catherine Boshaw, Doug Edlund, John Taylor, Lon Halvorson, E. Kent Halvorson, Tim Teteak, David Chevalier

- a) For Failure to Timely Register and Report as a Political Committee
- b) For Making Expenditures in a Manner as to Conceal the Identity of the Source of the Contribution or in any Other Manner so as to Effect Concealment.
- c) For Making Reportable Contributions Exceeding \$5,000 within 21 days of the 2001 General Election.
- d) For Reimbursing Contributions Made to a Political Committee.

(2) Environmental Materials Transport, LLC and Hank Hopkins

- a) For Failure to Timely Register and Report as a Political Committee.
- b) For Accepting Reportable Contributions Exceeding \$5,000 within 21 days of the 2001 General Election.

PDC Case No. 04-445.

Staff has completed its investigation into allegations that TME Capital Group and TME investors failed to timely register and report as a political committee, acted in a manner so as to effect concealment of contributions made to candidates in the 2001 Des Moines City Council elections, made contributions in excess of \$5,000 within 21 days of the 2001 general election and reimbursed an entity for making a contribution to a political committee.

Staff has also completed its investigation into allegations that Environmental Materials Transport, LLC (EMT) and Hank Hopkins failed to timely register and report as a political committee and accepted contributions in excess of \$5,000 within 21 days of the 2001 general election.

On April 5, 2004, a staff generated complaint was filed against TME Capital Group, LLC and its investors. The complaint alleged that TME and its investors failed to register and report the formation of a political committee when they pooled their funds to support candidate elections in 2001 and that TME and its investors acted in a manner so as to effect concealment of their contributions to candidates.

Staff's allegation that EMT and Hank Hopkins failed to register and report as a political committee during the 2001 election was also included in the investigation.

Background

In 1997, Henry (Hank) Hopkins, a Lynnwood businessperson, first proposed building a conveyor system to be used instead of trucks to transport fill to the site of the proposed third runway at Seattle Tacoma International Airport.

Mr. Hopkins approached Elling Halvorson and asked him if he would provide funding for the project. Mr. Halvorson indicated that he and a group of investors would be interested in financing the project.

Two limited liability corporations (LLCs) were formed to work on the conveyor system project. Mr. Hopkins formed Environmental Materials Transport, LLC (EMT) to provide a corporation to conduct the business of, and secure the necessary permits for, and the conveyor system project. At the same time, Mr. Halvorson and seven other investors formed TME Capital Group, LLC (TME) to fund the conveyor project system.

Commission Action against TME and EMT

During the 1999 elections Mr. Hopkins met with candidates running for the Des Moines City Council to see if they were open to the conveyor system project and supportive of the necessary permitting process. He then went to the TME investors and indicated that the candidates had open minds and, if elected, might look more favorably on the conveyor system than the incumbent council members.

The TME Group decided to contribute funds to the candidates, but was concerned that if the public found out about the contributions it might "taint" the candidates and would "bias other people towards them".

Two of the TME investors contacted friends and business associates and asked them to make contributions with the understanding that they would be reimbursed for their contributions.

The candidates supported by TME and EMT lost in the 1999 election.

On March 25, 2003 the Commission accepted a stipulation agreement in which TME and EMT admitted to concealing the true source of contributions to candidates in the 1999 election and agreed to pay a penalty of \$40,000 and reimburse the PDC \$3,000 for costs incurred in the investigation (concealing the source of contributions used to benefit candidates in the 2001 Des Moines City Council elections).

As part of the same investigation, the Commission reported multiple apparent violations of RCW 42.17.120 by Henry (Hank) Hopkins and EMT to the Attorney General's Office for appropriate action.

New Allegations against TME and EMT

I Unregistered Political Committees

During the course of assisting the Attorney General's Office in gathering more evidence on the referred case, staff learned that TME and its investors may have violated RCW 42.17 with regard to its role in supporting candidates for Des Moines City Council in the 2001 elections. When the case was referred to the Attorney General's Office on March 25, 2003, staff was not aware that Hank Hopkins and EMT or TME and its investors had made special solicitations to raise the money that was used to support candidates in the 2001 Des Moines City Council elections.

The investigation found that after the 1999 elections Mr. Hopkins, who had been unsuccessful in obtaining the necessary permits for the conveyor system project from the Des Moines City Council, approached the TME investors for a second time and asked them if they would be willing to contribute money to assist the campaigns of candidates for City Council in 2001.

The TME investors agreed to pool their funds to support three candidates running for Des Moines City Council in the 2001 general election, but this time by paying for a consultant to assist candidates thought to have a chance of winning and thought to be open-minded to their conveyor system project.

John Taylor, TME investor, stated:

“And there was ultimately a dollar amount determined and I think it was around \$30,000. As I recall. That would be part of the invested funds that would go to EMT, which EMT would use to hire the consultant and support some of the candidates.”

Between September 10 and December 10, 2001, EMT and Hank Hopkins solicited, and TME investors pooled \$60,000 for the purpose of supporting candidates in the 2001 Des Moines City Council elections. These contributions were then passed on to Mr. Hopkins and EMT to be used for candidate support. \$50,000 of this amount was eventually used for candidate support.

The \$60,000 solicited by EMT and Mr. Hopkins, and provided by the TME investors for the benefit of candidate support in the 2001 Des Moines City Council election, was not reported by TME and its investors or by EMT and Mr. Hopkins.

In addition, EMT and Mr. Hopkins did not report its \$50,000 in expenditures used for candidate support.

RCW 42.17.040 states that every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, must file a statement of organization with the PDC and the County Auditor.

II Concealment of Contributions and Expenditures

When the case against EMT and Hank Hopkins was referred to the Attorney General's Office on March 25, 2003, staff was not aware that TME and its investors may have concealed the source of contributions to benefit candidates in the 2001 Des Moines City Council elections.

Flow of Campaign Contributions

The TME investors pooled funds designed to support candidates in the 2001 Des Moines City Council election through an unregistered political committee (TME), to a second unregistered political committee (EMT) which ultimately issued anonymous cashier's checks to a consultant who used the funds to support the council candidates.

TME investors were aware that the money they were raising was for the purpose of supporting candidates. TME and its investors did not register as a political committee with the PDC or report their 2001 election activity. They did not disclose the source of the money they raised or how the money was spent.

TME investors were aware of the requirement to report campaign activity with the PDC but made no contact with the PDC to inquire about any reporting requirements they might have. No evidence was found that they sought expert legal advice on possible reporting requirements.

During the 1999 Des Moines City Council elections, TME Capitol Group concealed reportable contributions made in support of two Des Moines City Council candidates by asking others to make the contributions and then later reimbursing them for those contributions.

In 1999, the TME Group concealed their identity because of a concern that contributions coming from TME or EMT might "taint" the candidates and would "bias other people towards them" if it were known that the funds came from TME.

No evidence was found that this perception by the TME Group had changed between 1999 and 2001.

Anonymous Cashier's Checks

Payments totaling \$40,800 to support candidates were made with cashier's checks marked "anonymous" or "N/A".

The cashier's checks were purchased with funds that had been provided by TME and its investors for the specific purpose of providing support for candidates.

According to an attorney responding on behalf of EMT in the case reported to the Attorney Generals Office, the corporation was not listed on the cashier's checks as the purchaser because EMT was trying to keep a "low profile."

In one instance, the consultant asked Mr. Hopkins to include the word "anonymous" on the check for business reasons, so the vendor would not know the name of his client.

RCW 42.17.120 states that no contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

Contributions to a Political Committee Exceeding \$5,000 with 21 Days of the 2001 General Election

RCW 42.17.105(8) states that it is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17.090 in the aggregate exceeding fifty thousand dollars for any campaign for statewide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election.

October 16, 2001 was the 21st day before the 2001 general election.

On or around October 22, 2001, TME and its investors provided \$11,000 to an unregistered political committee (EMT) to assist candidates in the 2001 Des Moines City Council election. The expenditures were made within 21 days of the general election in apparent violation of RCW 42.17.105(8).

Reimbursement of \$19,000 in Contributions to Support Candidates

RCW 42.17.780 states that a person may not, directly or indirectly, reimburse another person for a contribution to a candidate for public office, political committee, or political party.

Monarch Enterprises, owned by TME investor Elling Halvorson, paid EMT \$19,000 on October 12, 2001. On that same day, October 12, 2001, EMT paid a political consultant \$19,000 to provide support services for candidates running for the Des Moines City Council.

Monarch Enterprises was reimbursed \$19,000 by TME on November 8, 2001.

John Taylor, a TME investor, stated:

"The capital call of \$30,000, we did not have enough capital, we didn't have the funds in TME to make a \$30,000 contribution to EMT. I think we had some funds that we could write a check to EMT but the rest we would have to raise through a capital call. Which as I explained earlier takes a fair amount of time. And Monarch, I believe it was Monarch, advanced the funds. One of the members who owns Monarch, advanced the funds to be used to complete the advance from TME to EMT. And then as the funds came in from the other investors to complete that \$30,000 capital call, those funds were used to reimburse the member's company and that is Monarch."

The reimbursement of the Monarch Enterprises contribution by TME is in apparent violation of RCW 42.17.780.

Staff Recommendation

Staff asserts the following

- TME Capital Group, LLC failed to register and report as a political committee in accordance with RCW 42.17.040 through 42.17.090 when they pooled funds and made expenditures to support candidates in the 2001 election.
- Environmental Materials Transport, LLC and Hank Hopkins failed to register and report as a political committee in accordance with RCW 42.17.040 through 42.17.090 when they solicited funds and made expenditures in support of candidates in the 2001 election.
- TME and its investors concealed the true source of funds used to benefit candidates in the 2001 Des Moines City Council election in violation of RCW 42.17.120.
- Contributions made by TME and its investors exceeded \$5,000 within 21 days of the 2001 general election in violation of RCW 42.17.105(8).
- Contributions accepted by EMT and Hank Hopkins exceeded \$5,000 within 21 days of the 2001 general election in violation of RCW 42.17.105(8)
- TME reimbursed Monarch Enterprises for contributions made to a political committee that supported candidates in the 2001 general election in violation of RCW 42.17.780.

Staff recommends that in PDC Case No. 04-445 the Commission report (1) multiple apparent violations of RCW 42.17.040 through 42.17.090, RCW 42.17.120, RCW 42.17.105(8) and RCW 42.17.780 by TME and its investors Elling Halvorson, Catherine Boshaw, Doug Edlund, John Taylor, Lon Halvorson, E. Kent Halvorson, Tim Teteak and David Chevalier, and (2) multiple apparent violations of RCW 42.17.040 through 42.17.090 and RCW 42.17.105(8) by Environmental Materials Transport, LLC and Hank Hopkins to the Office of the Attorney General with a recommendation to institute legal proceedings.